G. R. S. IX-5]

Previous references.

C4 65 : C611-6
" 126-15 & 1-6
" 269-160 1-2
" 338-16. 1-2
" 268-132 1-10

Later references.

CB. 69-18 & 1 & 3.
CR. 108-19 & 1 & 4
CB 99-30-1 & 3

1916:17
(Courts)

File No. 338-16.

Serial Nos. 3 to 12

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 3 to 12

Part B for June 1917.

SUBJECT.

Question of making acting arrangements while the Chief Judge goes on leave.

A 10 No.

The Registrar Chief Court
No J 4984 D/19-6-1917

FD: Copy of note D/19-6-17 & I take it that as the Judges do not consider the appointment of another Judge necessary, the functions of the Chief Judge under S. 14 of the Regulation may be temporarily exercised by the Chief

Informal.

(For Disposal at a Meeting)

No. C.295 –

27/11/1917

GENERAL AND REVENUE SECRETARIAT.

COUNCIL MATTER.

SUBJECT.

Question of making acting arrangements while the Chief Judge goes on leave.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

C S Balasundaram

20th November 1917.

Chief *Secretary to Government.*

H H C C Extraordinary Member of Council.

3. 2. 18.

First Member of Council. Opinion recorded.

1324
27. 11. 17.

Second Member of Council. 26. 11

WD 2670—GPB—1,000—11-5-17

G. R. S. 11] 191677

GENERAL AND REVENUE SECRETARIAT.

(Courts / Police)

NOTES.

File No. 338-16

FILE HEADING.

Leave to Sir Leslie Miller, Chief Judge.

From

Sir Leslie Miller.

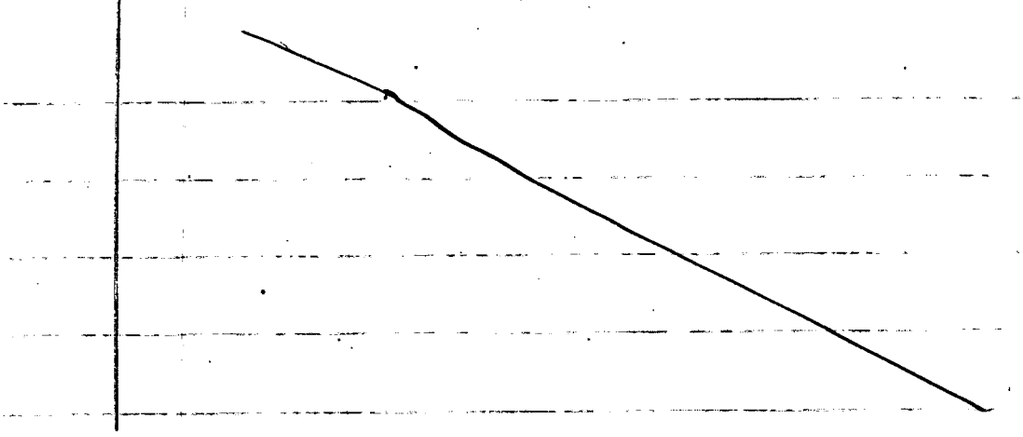
No. 80	Dated 15.5.17	Received

Diary No. 12518	Enclos.	Spare Copies.	Serial No. 3

BRIEF ABSTRACT OF LETTER.

Applies for 15 days privilege leave in continuation of the Chief Court vacation and states that no substitute is necessary during that short period.

NOTES AND ORDERS.



NOTES—First Sheet.

Fernhill,

18th May 1917

H. 152

D. O. No. 4937

Court's File no 338 of 1916-17

Issued.

My dear Sir,

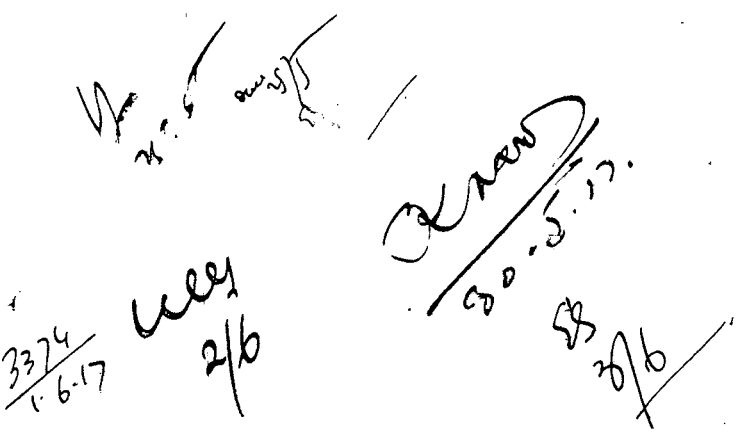
I send herewith a letter from Sir Leslie Miller asking for 15 ~~days~~ thirty days' leave in continuation of the Chief Court vacation. No arrangements are said to be required during his absence as the period is very short. I shall wire to Sir Leslie Miller if His Highness kindly sanctions the leave.

Yours sincerely,

18.5.17 (Dewan)

R.H. Campbell Esqr., C.I.E.

For perusal of
His Highness's Orders.



Court file no 338/1916-17

2) 74481

D.O

Leave for from 1st
casu y the memo
enclosed. I am writing to
Sir L Miller D.O.

FERN HILL,
OOTACAMUND.
18.5.17

18.5.17

My dear Sir

In reply to your D.O. letter
of even date, I write to say that
His Highness the Maharaja Sanctions
the grant to Sir Leslie Miller,
of 15 days' Privilege Leave in
continuation of his Recess of the
Chief Court

Yours sincerely
R Ramachandra Rao
Private Secretary

To
Sir M. Visvesvaraya
K.C.S.I.
Dewan of Mysore.

4 Telegram dt 18.5.17 to Sir Miller
Intimating that leave in
5 continuation has been sanctioned
that no relieving will accrue separately
D.O no. C.C. 38 dt 19.5.17 to the same Hon'ble
Copying the telegram.

225
24.5.17

4939

Jssued.

Courts file no 335 / 1916-17

Fernhill
(9.5.17

3)

Dear Mr Kantaraj Urs.

I send herewith for your kind perusal & return the correspondence relating to the grant of 15 days privilege leave to Sir Leslie Miller, in continuation of the Chief Court vacation. As the matter was urgent I ~~sent to~~ obtained Darbar stamps in Bangalore & ~~his~~ addressed & communicated it to Sir Leslie Miller by wire

Yours sincerely
M
19.5.17 (Dewan)

Courts file no 338 B (916-17)

2518

5

4) 74482

Lambton
21.5.17

Blenheim House
Ferryhill
19th May/17

Dear Sir Rivers Wilson

I have received the
Board's enclosed communication
re the grant of 15 days' privilege
leave to Sir Leslie Wilson
in connection with the Chief
Vacancy

Yours very
[illegible]

5) Draft-Reply - Put up - Consult Treasury as to form.
Owen
24/5

7 to P.F. & I. 6) Three collections relating to the grant of leave to Judges of the Chief Court are put up. Draft notification is submitted.

RG 22.5.17

7) Approved
Owen

Sar)

8) Issue Notification
23/5

WD 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2]

General and Revenue Secretariat.

File No. 338 of 1916.

Serial No.	
6	To the Compiler, Mysore Gazette No D 4218 23rd May 1917 Notifies the grant of Priv. leave of absence for 15 days to the Hon'ble Chief Judge Chief Court of Mysore. To the Comptroller to Govt No D 4219 23-5-1917 To the Registrar Ch. Court No D 4220 23-5-1917 Forwards copy of the above.
7	From the Registrar, Chief Court of Mysore through the Comptroller. Memo No. 1107 of 21-5-17. Forwards, with the Leave Certificate, the application for privilege leave on account of Sir Leslie C. Miller, Kt. Chief Judge of Mysore. Subd 9) No action is necessary, the present reference being merely the formal application for leave which has been sanctioned & noted already. mgn 7-6-17.

B/11/6

NOTE—Contn. sheet.

B
9/6

(7

Counsel
leave
The Rules Decision may be approved.

The question whether there
the Reg there sh'd be a Chief Justice may
be studied now

Dec 11/16

H·165

W. D. 791—GPB—2,000—2-10-15

REPLY.

(To be written on this margin.)

Office of the Dewan of Mysore.

NOTE.

Dated.....12th....J..u.n...e..*191* 7

Letter dated the 9th June 1917 from Sir Leslie Miller, Coonoor, regarding the extension of his leave, and reply thereto.

" " "

Forwarded to the Secretary, Ge-
-neral Department, for favour of ne-
-cessary action.

12-6-17

The Secretary,

General Department.

A-S III Secn 12/6

Sg 14/6.

9265

ND 1233—GPB—60,000—1-12-16—S

G. R. S. III-2]

General and Revenue Secretariat.

Cts File No. 338 of 1916 17

Serial No.	
8	From The Registrar, Chief Court of Mysore. No. R. O. S. C. no. 562/16-17 dt 11th June 1917. Submits an application on behalf of Sir Leslie C. Miller Kt. Chief Judge, for one Month's privilege leave from the 5th June 17 in Substitution of the 15 days leave Sanctioned in Notification No. J. 4218 - Cts 338-16-6 dt 23rd May 1917. (b) The title to the leave applied for has been Supported by the Comptroller's Certificate Sent along with the application. A Sealed Confidential D. O. (no. 70) addressed to the General Secretary is also Submitted. 12.6.17 Sd 12/6 Secy

Hg S.

NOTE—Contn. sheet.

G. R. S. 12]

2657

(10

General and Revenue Secretariat. | HS File No. 338 of 1916-17

Serial No.

11) The Regulation requires that there shall be three judges or more, if there one of them shall be the Chief Judge (Sec 4).

12) This is complied with as far as the present complement of the Chief Court goes.

13) The question whether, when one of the three Judges goes on privilege leave, the Chief Court consists of less than 3 Judges has been answered in the negative on a few occasions in the past.

d: 65-06
c: 126-13
d: 269-16

14) Even now, a similar answer is suggested by the letters of Sir Miller & the Registrar.

Page P 1-7

15) If an Offg Chief Judge as suggested by the Registrar is appointed, a Puisne Judge shall also have to be appointed.

Page 7

16) If no Offg Chief Judge is appointed, the duties of the Chief Judge may always be performed by the Chief Court Vs the next two Judges. These duties are contained in Sec 18 of the Regulation.

17) The draft notification may be approved and the above views communicated to the Registrar, if Govt deem fit as indicated in the second draft.

First Member & Secretary

Secy for Home
13/6
B.B.B.

18) Draft Govt -

Secy
15/6
Secy 1676
B.B.B.

Please submit to the Bishop after seen

(N: 0: 1)

18.6.17

Secy

Miss Mesdames with a D.F.N. Secy
19/6
B.B.B.

3467/15.6.17

7096 with P.K.
16.6.17

NOTE—Contn. sheet.

GPB—70,000—17-12-15

95

ND 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2]

General and Revenue Secretariat.

Courts File No. 338 of 1916-17

Serial No.	
9	To The Compiler, Imperial Gazette, no. J 4783 Dt 19.6.17 Exclusive the leave already granted by 15 days. To The Comptroller. no. J 4791 Dt 19.6.17 Forwards copy of the above with the intimation that the leave is on full pay.
10	To The Registrar, Chief Court. no. J 4784 Dt 19.6.17 Forwards copy of the notification.
	21) Memo. with D.E.N. & D.S.N. B.A. 19.6.17. VK EB A/6
	First Member) 22 Fair Trial Note Signed by the First Member is put up with a D.J.N.
3565 20.6	Dwarka Nath 21/6 Asst
7212 21.6.17	Bor 20/6/17 Dwarka)

NOTE—Contn. sheet.

(12

Final Note by the First Member of Council.

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23. **Subject:—**

Privilege leave to Sir Leslie C.Miller, Kt. Chief Judge.

---

24 As Sir Leslie C.Miller, Kt., Chief Judge, had to undergo treatment in the Pasteur Institute at Coonoor and as the course of treatment could not be completed before the expiry of the 15 days' privilege leave granted to him in Notification No. J. 4218-Cts.338-16-6 dated the 23rd May 1917, he applied for one month's privilege leave instead of 15 days. Orders granting the necessary extension have been issued. No fresh arrangements are considered necessary for Sir Leslie Miller's work during the short period and this has been intimated to the Registrar, Chief Court.

20th June 1917

(13

Submitted to His Highness.

25

13 *I submit herewith a Final Note by the* First *Member of Council on the subject of* the extension of the 15 days' privilege leave granted to Sir Leslie C. Miller, Kt., Chief Judge, *for His Highness' gracious* ~~approval~~ perusal -

M. Visvanath

Dewan.

23rd June 1917

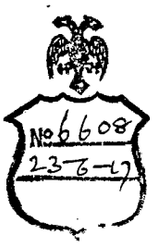
2657

(14

Record of Cases submitted for the Orders of His Highness the Maharaja.

26. *Subject.*

Extension of the privilege leave grar ed to Sir Leslie C. Miller, Kt., Chief - Judge.



1319.

27 *Order.*

~~KRW~~

26/6/17

93
11.7.17

17/107

65/4/7

Lee 4/7

188.
9.7.17.

28 Sunday

27.6.17.

ND 1233—GPB—60,000—1-12-16—S.

(15

G. R. S. III-2]

General and Revenue Secretariat.

Court File No. 338 of 1916.

Serial No.	
11	From The Registrar, Chief Court no. D.Dis 1 & 4.7.17 Reports that Sir Leslie Miller Kt entered upon his duties on the forenoon of the 4th inst after availing himself of the pr. leave sanctioned in the Notfn of 19.6.17 29 Submitted. 25/7/17
12	From the Registrar of the Chief Court. R.O.S.C. No. 562 of 23.7.17. Invites the attention of the Govt to an important question that is raised by the Observation contained in the latter part of this Office Letter no. J. 1784 of 19.6.17. Submitted. 25.7.17 30. When Sir Leslie Miller went on leave no acting appointment of a Chief Judge was made and the reasons for adopting this course are explained in paragraphs (16&17) above. The Judges now urge that it is not desirable to leave the place vacant when the Chief Judge goes on leave. They raise three objections to this course adopted by Govt:-

he flew was read on circulation days ago

NOTE—Contn. sheet.

WD 1233—GPB—60,000—1-12-16—S.

(16

G. R. S. III-2].

General and Revenue Secretariat. | ct. File No. 338 of 1916.

Serial No.

(1) Practical difficulties and inconveniences might arise in the regulation and distribution of work.

(2) The administrative work is likely to suffer in the absence of a recognised head.

(3) There is no precedent in support of this position adopted by Govt.

31. In regard to the reason given by the Govt for not appointing a chief Judge, namely, that "the Judges do not consider the appointment of a chief Judge necessary", the Judges may say that their remark was made solely from the point of their work of the Court.

32. It is submitted that the chief Judge as well as the other two Judges of the chief Court expressly stated in their letter to Govt. that there was no need for any one to act for the chief Judge for the short period. There was absolutely nothing in the letter to indicate that the remark was only with reference to the work and not as regards the validity or constitution.

Papers flagged × B.J.P. 1 2

33. With deference, I beg to submit that an officiating appointment of a chief Judge without appointing a third Judge will be opposed to the express Statutory provision in the Regulation, and to illegal. A mere temporary absence of a Judge on privilege leave has been held not to reduce the number

NOTE—Contn. sheet.

WD 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2]

General and Revenue Secretariat. | cs File No. 338 of 1916.

Serial No.

required by this Regulation" (vide Mr. Chandrasekhara Iyer's note in para 3 of this note in Court file 65 of 1916) if the Chief Judge be considered not to be the Chief Judge for the time being, then there would be a Chief Judge and only one puisne Judge, and the Chief Court will then not be a properly constituted Chief Court under the Regulation.

T

34. The practical difficulties and inconveniences referred to by the Registrar will arise even when a puisne Judge goes on leave and no substitute is appointed. But the Chief Court have of late recommended in more cases than one that no substitute was necessary. That precedent is equally applicable to the present case, and there is no ground to differentiate the two cases.

C. D & E

35. The only power that the Chief Judge apart from the Chief Court can exercise are those conferred on him by Govt. under S 18 of the Regulation. As Govt. have not conferred these powers on him, they have all to be exercised by the Chief Court. It is therefore not clear how the administrative work will suffer by the non appointment of a Chief Judge.

36) Submitted for orders.

Dwn

NOTE—Contn. sheet.

WD 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2]

General and Revenue Secretariat. | File No. 338 of 1916.

Serial No.

37 Notes to the Chief Court seems necessary. Govt have acted upon proper principles.

Dwarka Das
1/9/19

(First Member)

Recd 3/9/19

38 I do not agree. I think the view taken by the Chief Court is correct & should be considered, if the Government at a meeting of the Council, to pursue such measures in future as

1555/1919

1719

39 Sub to Govt for order about circulation.

1694/18/9/19

[The opinion of the Govt. advocate about the Construction of the Ch. Ct Regn & the effect of the absence of a judge from duty on casual leave, & on privilege leave may be taken.]

40) The matter may be considered in Council. I agree it is not desirable to have the Chief Court at any time without its full Complement of Judges.

9.11.19

Circulate

12/11/19

Recd 19.11

NOTE—Contn. sheet.

rob

(Registered.)

(7) (19)

Subject.-

Question of making acting arrangements while the Chief Judge goes on leave.

OPINION OF THE COUNCIL

42 Acting arrangements may be made in consultation with the Judges on each occasion

WLL
2/5

43 Attorney to put D.S.N.

CBS
2/5/18

44 Submit with a D.S.N.

KV.
4/5 WLL

45 For favour of approval

EB
6/5.

46 Chief Secretary)
Please treat it as a D.S.N. & Submit it to Member for approval.

CBS
7/5/18

47 D.S.N. is submitted for favour of approval.

EB
7/5

approved.

Fair trial note signed by Chief & Members 7/5/18 is sent herewith.

Asst. Member 7/5/18

L.9

L.9

L.002
8.5.

WD 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2

200

General and Revenue Secretariat. | Courts File No. 338 of 1916-17 (20

Serial No.	
5877 / 8-5-18	50 D. S. R. 5 submitted Dewan) 8/5/18

NOTE—Contn. sheet.

Final Note by the First Member of Council

Subject:—

Question of making acting arrangements while the Chief Judge goes on leave.

---

51 The accompanying papers relate to the question of making acting arrangements while the Chief Judge goes on leave.

52. Sir Leslie Miller, Chief Judge, went on privilege leave of absence for a month with effect from the 4th June 1917 and no acting appointment of a Chief Judge was made during this period, the reasons for which are explained in paragraphs 11 to 17 of the notes. The views of Government were communicated to the Chief Court in letter No.J 4784 of the 19th June 1917 and the papers were submitted for His Highness' perusal with the Dewan's submission note of the 23rd idem.

53 3. The Judges have thereupon urged that it is not desirable to leave the place vacant when the Chief Judge goes on leave. The following are the objections raised by them to the course adopted by Government.

(i) Practical difficulties and inconveniences might arise in the regulation and distribution of work:

(ii) The administrative work is likely to suffer in the absence of a recognised head; and

(iii) There is no precedent in support of the position adopted by Government.

54 4. The opinion of the Government Advocate taken in regard to the construction of the Chief Court Regulation and the effect of the absence of a Judge from duty on casual and privilege leave

is contained in the accompanying sealed cover.

5. The question was considered in Council who are of opinion that acting arrangements may be made in consultation with the Judges on each occasion.

6. This recommendation of the Council may be approved.

First Member of Council.

Submitted to His Highness.

Q 67 *I submit herewith a Final Note by the* First *Member of Council on the subject of* making acting arrangements while the Chief Judge goes on leave

.....

for His Highness' gracious approval.

M. Rangacharya

Dewan.

9th May 1918.

(24

C. 295

Record of Cases submitted for the Orders of His Highness the Maharaja

Subject.

Question of making acting arrangements while the Chief Judge goes on leave

1279.

5 8 *Order.*

~~KRW~~

11/5/18

4282/25

Ur 13.5

63 25/5 26/5

Ubr. 22.5.18.

54 22.5.18.

59 Chief Sunday 12.5.18 do

60 Tu 60 cols 16/5/18

61 16/5

I shall be glad if agreeable to
meet the Port- advocate
& discuss the question of the
Construction of the Regs. &
note the views separately

CPS

15/4/11

15/4/11

Two questions are raised in the Registrar's letter:-

(1) when one of the Judges of the Chief Court goes on leave can the remaining two Judges carry on the work of the Chief Court without repugnance to the provisions of the - Chief Court Regulation constituting that ~~Chief~~ Court?

(2) When the Judge who goes on leave, happens to be the Chief Judge, it is obligatory - to make an officiating appointment as --- Chief Judge not only for the purpose of - satisfying the requirements of the Chief Court Regulation but also from an administrative standpoint in so far as such functions are by the said Regulation vested - in the Chief Judge?

2. (1) The Judges of the Chief Court do not wish to make any pronouncement on the first question but by the recommendations made by in the past them to the effect - that no substitute is necessary, they may be deemed to have inclined to the view that they can.

(2) On the second question while they seem - inclined to think that the appointment of a third

Judge

Judge to keep up the numerical strength of the - Chief Court is unnecessary, they emphasize that an officiating appointment as Chief Judge should be - made when the Chief Judge goes on leave from the administrative point of view, at any rate if not the constitutional. Reference is also made to the statutes in British India in support of their views.

3. I understand that I am called upon to examine these two questions purely on legal grounds.

(1) Chief Court is defined in section 3 of the Chief Court Regulation (I of 1884) as meaning the Chief Court as constituted under that Regulation and the Chief Judge as the Chief Judge of the said - Chief Court appointed under that Regulation.

Section 4 enacts that the Chief - Court of Mysore shall consist of 3 or - more Judges who shall be appointed by - His Highness the Maharaja and shall hold their office during HIs Highness' pleasure. One of the Judges of the Chief Court shall be appointed to be the Chief Judge of the Chief Court.

Section 18 enables the Government to confer upon a Chief Judge all or any

of

of the powers therein mentioned and the exercise of such powers by him shall be deemed to be the exercise of the same by the Chief Court. Such powers are limited to the appointment and direction as to the powers and duties, of ministerial officers and to the distribution of the work of the Chief Court between himself and the other Judges

(2) In British India similar provisions are to be found in the High Courts Act 1861, (24 and 25 Vict. C. 104), section 2 of which enacts that the High Courts therein named shall consist of a Chief Justice and as many Judges not exceeding 15 as Her Majesty may, from time to time think fit and appoint.

Under section 4, the Judges hold their office during Her Majesty's pleasure.

Under section 14 the Chief Justice shall, from time to time, determine what Judge in each case shall sit alone and what Judges of the Court, whether with or without the Chief Justice, shall constitute the several division Courts.

The letters Patent issued later empowef the Chief Justice to appoint ministerial officers.

Section 7 of the Act makes provision for vacancy of the office of Chief Justice and other Juges. It runs thus:-

"Upon

"Upon the happening of a vacancy in the office of the Chief Justice and during any absence - of a Chief Justice, the Governor-General in Council or the Governor in Council, as - the case may be, shall appoint one of the - Judges of the same High Court to perform the duties of Chief Justice of the said Court .. ..;and upon the - happening of a vacancy in the office of any other Judge and during anu absence of any - such Judge or on the appointment of any such Judge to act as Chief Justice, it shall be - lawful for the Governor-General in Council, or Governor in Council as the case may be , to appoint a person ..... to act as a - Judge of the said High Court".

4. It will be seen from the above extract that while it is obligatory in British India to appoint an Officiating Chief Justice during "any absence" - of the Chief Justice, no such obligation arises - under the Chief Court Regulation in Mysore. In - other respects the points of difference are few. - While section 18 of the Chief Court Regulation enables Government to confer certain powers on the - Chief Judge, similar powers are conferred on the - Chief Justice direct by the statutes and Letters - Patents themselves, that is to say, in British India

the

the Chief Justice has certain statutory functions to perform, given to him, as ~~settled~~ stated above, by the Statute itself, whereas in Mysore, the Chief Judge has similar functions to perform, but given to him by an executive order of Government and not by the statute itself.

5. I have dealt with the provisions of the Charter Act at some length with a view to show that in Mysore, apart from the question of the constitution of the ~~Chief~~ Court itself, there does not, to my mind appear any reason to treat the appointment of the Chief Judge as in any way different from -- that of the other Judges of the Chief Court.

6. Now coming to the question of the constitution of the Chief Court, I do not find any material difference in the principle underlying the constitution of the Chief Court and that of the High - Courts in British India. The Chief Court shall - consist of three or more Judges. At present the - strength of the Chief Court is three. When one of the Judges is on leave, he is still a Judge of the Chief Court though not on active service and in -

such

such an event, the Chief Court does consist of 3 Judges, one on leave, and the other two engaged in active work. It is altogether different from a case where a vacancy has occured by reason of the death, retirement, resignation or otherwise of a permanent incumbent. It cannot be said to be a case where the numerical strength of the Court - has been reduced from three to two. It is, in fact, not a vacancy, in the sense that thereby the Court as constituted by the Regulation is dimunished. In cases where an Officiating Judge is appointed during the absence on leave of a permanent Judge, the result will be that the Chief Court will at best consist of four instead of three Judges for which there is provision in the Regulation. Any other construction may lead to the anamolous result that ~~the~~ Court must be deemed to be non-existing, if even when there is a full ~~complement~~ complement of Judges, one of the - Judges should happen to become suddenly ill, or absent himself for a few days. On principle there appears to be no difference in the absence on leave whether the leave is called, for account purposes, ~~privilege~~ privilege

previlege leave or any other leave. The Regulation does not make any difference in regard to the statutory obligation to fill up a vacancy - if vacancy it could be called - caused by the absence on leave, of the Chief Judge or any other Judge, whatever view - may be held in respect of a similar event were it to happen in any of the Chartered High Courts of British India.

7. (1) As regard administrative inconvenience it will be seen that the work devolving on the Chief - Judge in regard to the distribution of Court work - is not likely to offer during his absence any peculiar difficulties, as there can possibly be, in any event, only one Bench consisting of two Judges, as the Chief Court is at present constituted.

(2) It is true that in Mysore till now - no case has occured within my experience - and it extends over a period of 18 years - where an officiating appointment as Chief Judge has not been - made during the absence on leave of the Chief Judge, but, it may be noted that when a Chief Judge went on leave and an afficiating appointment was made from

from among the puisne Judges, the vacancy thus caused by promotion was never left unfilled.

(3) 8. In the view I have taken there is nothing unconstitutional in Mysore under the existing law, in not appointing a puine judge to officiate for the Chief Judge, if it was not meant to appoint another judge, in the place of the Judge promoted, and if it is permissible for me to add I would like to mention that it is always advantageous to have the full complement of Judges, except in cases where the Judge, whether Chief or puine happens to be absent on casual leave.

Subrahmanya Iyer
for Sadasiva Iyer
16.11.17.

(3) If the appointment of an acting Chief Judge is obligatory either on the ground that the Reg.n requires it or on the ground that a vacancy is created which must be filled up to keep up the full Statutory Strength of the Chief Court it seems to me that on like principle the vacancy caused by the promotion of one of the puisne judges as Chief Judge should be similarly dealt with & the chain of Statutory appointments should remain unbroken.

26

CL 3386

Telegram. Sl. 200. 4

Issued.

To

Sir Leslie Miller

Chief Judge of Mysore

Vercaud.

Your letter. ~~No objection to~~ ~~your going on leave.~~ ~~Official~~ ~~orders~~ will issue separately.

Dewan.

1851?

4938

(27 Ferruchi 19/5/17)

~~Ms 338-16~~

Sl. no. 5

My dear Sir,

Issued.

I received your letter of the 15th instant intimating that you had applied for 15 days' privilage leave in continuation of the Chief Court vacation.

In reply I sent a message to you yesterday as ~~hereunder~~ worded :-

" Your letter. Leave in continu-
" ation is sanctioned by His High-
" ~~ness~~ Highness. Notification will issue
" separately."

(Shp)

Hope you are enjoying your third-term holiday.

Yours sincerely,

(Dewan)

#. 5. 17
19

126

Court

G. R. S. 26]

File No. 338-16

Serial No. 6

Diary No. of letter replied to .....

No. J 4218

General and Revenue Secretariat

( )

, *the* 191 .

~~To~~ Notification

Sir Leslie Creery Miller Kt:

Chief Judge, Chief Court of Imperx,

is granted privilege leave of

absence for 15 days with effect

from the 4th June 1917.

Date of issue 23/5/17.

Signed by M. D. Narasinga Rao

By Order

for Secy. to Govt.

Genl. Dept.

To J 4219

The Compiler, Imperx Gazette for

publication

Copy to the Comptroller to Govt.

with the intimation that the

leave is on full pay.

By Order.

for Secy to Govt

Genl. Dept.

SUBJECT.

J 4220

Copies of the above to the Registrar

Chief Court with

22-5-17

Govt. 1338

Govt. 29 Register

19 16. 17. Govt 2915

The Registrar of the Chief Court of Mysore Bangalore.

To

21 MAY 1917

THE SECRETARY TO THE
GOVT. OF MYSORE,
Genl: DEPT.

Through The Comptroller, Mysore Govt.

C.C. 338-16-7.

Dated 16th
Despatched 17th } may 1917.
Received

~~General No.~~ S. C. No 562
~~No.~~

Enclosure No.

Undersigned has the honor to submit an Application for Leave on behalf of Sir Leslie Creery Miller Kt., Chief Judge in Mysore.

the particulars of which are given overleaf.

*Applicant has recorded the declaration prescribed in ~~Section 119~~ Art: 184 of the Mysore Service Regulations.

S. Venkataranga Iyengar
For Registrar.

* To be omitted in cases other than privilege leave.

GEN. & REV. SECT. 29 MAY 1917

JUDICIAL SECRETARIAT 29 MAY 1917

GPB—500—16-3-10

Memo No 1107 dt 21/5/17
Forwarded with a leave Certificate.

21/5/17

S. Venkataranga Iyengar
Asst Comptroller

(30

9257)

APPLICATION FOR LEAVE

1.	Name of applicant ...	Sir Leslie Creery Miller Kt.
2.	Rank and salary including allowances.	Chief Judge in Mysore Pay. Rs. 3,500/—
3.	District and station ...	Bangalore.
4.	Nature of leave applied for and section of the Service Regulations applicable.	Fifteen days' privilege leave on full pay under Sec: 184 my: Ser: Regns, in extension of the vacation.
5.	From what date ...	4th June 1917.
6.	No. and date of Comptroller's certificate in support of the title to the leave, with period and nature of the leave certified to.	No: 153 dy 21.5.17
7.	Arrangements proposed for conduct of applicant's duties during his absence, and qualifications of the proposed officiator.	No Substitute is necessary
8.	Other remarks, if any, such as necessity, urgency, etc.	On private affairs.

S. Venkata Rao Asst Registrar
for Registrar.

(31)

C. O. 339—G. A. D. 6]

COMPTROLLER'S OFFICE.

Finl.] & REV. SE.

BANGALORE,

No. 153 29 MAY 1917

Dated 21st May 1917.

Leave Certificate.

Certified that Sir Leslie Creasy Miller KC- Chief Judge of the Chief Court of Mysore under the Mysore Government ~~is~~ will be entitled to 30 days Privilege leave on full pay on 4th June 1917 in Extension of the Vacation as per terms of his Leave Contained in Genl Sec's Letter no: J. 797/Bbl 268-13-6 dy 7-9-14.

~~leave under Article 184 (5) of the Mysore Service Regulations.~~

Forwarded to the Secretary to the Govt of Mysore General Department

~~with reference to his docket No. dated 191~~.

S Johnadasam

Asst. Comptroller.

Hill Grove Hotel
Connor
9th June 1917

My dear Sir

I regret very much
to have to trouble you
with a further application
for leave, but this is
necessitated by the fact
that I have been advised
to undergo a course of
treatment at the Pasteur
Institute & have to leave
Connor for that
purpose. I have not

Dear any decision with
I think he can advise
to take the course as a
pre... ..., and can
told that. I ought not to
attend to work till the end
of the month -

I am thus for asking
an month's leave in
extension of the vacation
instead of 15 days then
sanctioned. I am
... pour whether the
judge will want any
help to carry on till

32

the offering of that time -
I have asked the Registrar
to put his views on that
point in sending the
application -

I am very sorry to
have to trouble you in
this way but I am such
- avoid it in the circumstances

Yours sincerely

Sarah Sellers

Hill Farm Hall
Cosham
9. June 17.

My dear Sir

I have decided to apply on my behalf for permission to remain in continuation of the vacation instead of the period of 15 days already sanctioned. The reason for this application is that I have had to come here for treatment of an Carbuncle which is in course with [illegible] over which the [illegible]

(33

---

my present leave – I have
asked the Registrar to pick
out one of the Stipendiary Judges
to hear any case that
may arise for the short period.
It depends on the work but I
should think it is probably
unnecessary to appoint any one.

Yours sincerely

D.S. III
Statement of annual and casual leave enjoyed –

Dury
11/6

(34

Confidential.

No.70.

Chief Court of Mysore,
Bangalore,
11th June 1917.

Dear Mr. Narasinga Rao,

I have this day forwarded an application for a month's privilege leave on behalf of Sir Leslie C. Miller Kt. Chief Judge, in substitution of the fifteen days leave sanctioned in Government Notification No.J. 4218-Cts. 338-16-6 dated 23rd May 1917.

I am desired to state that, beyond the appointment of an officiating Chief Judge, -- in order to satisfy the requirements of the Chief Court Regulation, and to provide for the performance of the functions vested by law in the Chief Judge -- no other arrangement seems necessary during the period of Sir Leslie C. Miller's absence on leave.

Yours sincerely,

N. Gopalaswamy

Registrar.

To

D.M.Narasinga Rao Esq., B.A., B.L.,
Secretary to the Government,
General Department,
Bangalore.

Immediate

19.

35

FROM

N.T. Gopaliengar Esq. B.A.,LL.B.
Registrar,
Chief Court of Mysore,
Bangalore.

To

D.M. Narasinga Rao Esq., B.A.,B.L.
THE SECRETARY TO THE
GOVT. OF MYSORE,
General DEPT.

Through

The Comptroller to the
Government of Mysore,
Bangalore.

Dated 11th June 1917.

Despatched do.

Received

General No. R. O. S. C. No. 562/16-17
No.

Enclosure No.

Undersigned has the honor to submit an Application for Leave on behalf of

Sir Leslie C. Miller Kt.,

Chief Judge.

the particulars of which are given overleaf.

*Applicant has recorded the declaration prescribed in Section 442 of the Mysore Service Regulations.

N. Gopaliengar

Registrar.

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* To be omitted in cases other than privilege leave

GPB—500—16-3-10

C.S. 338-16-6

12 JUN 1917

Memo no: 1199 dt 11-5-17
Forwarded with application
for leave received vide no 153 dt 21-5-17
already sent to Govt with Transfer
application

11/6/17 Head Employer

36

APPLICATION FOR LEAVE.

1.	Name of applicant ...	Sir Leslie C. Miller Kt.
2.	Rank and salary including allowances.	Chief Judge, Chief Court of Mysore Rs.3500/-.
3.	District and station ...	Bangalore.
4.	Nature of leave applied for and section of the Service Regulations applicable.	Privilege leave for one month from the 5th June in substitution of 15 days leave applied for and sanctioned by the Government in Notification No. J.4218-Cts 338-16-6 dated 23rd May 1917.
5.	From what date ...	4-6-17.
6.	No. and date of Comptroller's certificate in support of the title to the leave, with period and nature of the leave certified to.	Certificate No 153 & 71-5-17 attached.
7.	Arrangements proposed for conduct of applicant's duties during his absence, and qualifications of the proposed officiator.	Vide accompanying confidential D.O. No. 70.
8.	Other remarks, if any, such as necessity, urgency, etc.	To undergo a course of anti-rabic treatment at the Pasteur Institute at Coonoor.

N. Gopalaswamy

Registrar.

C. O. 339—G. A. D. 6

COMPTROLLER'S OFFICE.

Finl.]

BANGALORE,

No. 153

Dated 21st May 1917

FILE No. 338-16

SERIAL No.

GEN. & REV. SECT. 12 JUN 1917

JUDICIAL SECRETARIAT 12 JUN 1917

Secy

Leave Certificate.

Certified that Sir Leslie Gregory Miller KC-

Chief Judge of the Chief Court of Mysore

under the Mysore Government ~~is~~ will be entitled to 30 days privilege

leave on full pay on 4 June 1917 in exchange

of the vacation as per terms of his Service Contained

in General Secretary's letter No 7797/Cls 268-13-10 & 17-5-14

leave under Article ~~.....~~ of the ~~Mysore~~ Service Regulations.

Flag I

Forwarded to the Secretary to the Govt. of Mysore

General Department

~~with reference to his docket No. ..... dated ..... 191 .~~

"True Copy"

S Venkataramayam

Asst. Comptroller

S Venkataramayam

Asst. Comptroller.

11-6-17

Mysore. 38

12th June 1917.

My dear Sir,

Issued

I duly received your letter of the 9th instant about the extension of your leave.

I am sorry to hear of your accident. The question of the leave will receive every consideration as soon as the application is received through the Chief Court.

12.6.17

Yours sincerely,

(Dewan)

Sir Leslie Miller, Kt.,
Hill Grove Hotel,
Coonoor.

2 Sheets

39

G. R. S. 26]

C.S File No. 338–16

Serial No. 9

Diary No. of letter replied to

General and Revenue Secretariat

( )

191 .

Date of issue 19.6.17

Signed by Mr Dm Narasimha Rao

No. J 4783

Notification

~~To~~

The privilege leave of absence for 15 days granted with effect from the 4th June 1917 to Sir Leslie Creery Miller Kt. Chief Judge, Chief Court of Mysore in Govt Notification No J 4218 dated 23.5.17 is hereby extended by 15 days.

By order

Duell 13/6

Secretary to Govt.

General Dept.

To the Comptroller, Mysore Gazette for publication

J 4791 Copy to the Comptroller Govt over with the intimation that the leaves on full pay.

~~SUBJECT~~.

15/6/17

18.6.17

Do

2 drafts

G. R. S. 26]

Cs File No. 338-16

Serial No. 10

Diary No. of letter replied to

No. J 4784 Encl

General and Revenue Secretariat

( )

, the *191* .

To The Registrar,

Chief Court of Mysore

Date of issue 19.6.17

Sir,

Signed by M.N. Srinivasa Iyr

With reference to your No R.O.S.C 562 dated 11th June 1917, submitting an application for leave on behalf of Sir Leslie Creery Miller Kt, Chief Judge, I am directed to forward herewith for the information of the Judges of the Chief Court, a copy of the Govt Notification No. J 4783 dated 19 6 17, and to state that

Cs 353-16-9

over.

SUBJECT.

41

if an officiating Chief Judge is appointed
a puisne Judge will also have to be
appointed under the Chief Court Regulation,
and that as the Judges do not
consider the appointment of a puisne
Judge necessary, the ~~powers~~ functions
of the Chief Judge under S 18 of the Regulation
may be actively ~~performed~~ exercised by the
Chief Court.

W.W.
15.6.

I have the honour to be,
Sir
Your most obedient Servant

Dated
Secy to Govt 1916
Govt Agent.

18.6.17
RW

18/8/16

List of enclosures

Copied by

Examined by

GPB—25,000—4-3-13

U R G E N T.

Chief Court of Mysore,
Bangalore, 4th July 1917.

4 JUL 1917

From

N. T. GOPALIENGAR, Esq., B. A., LL. B.,
Registrar of the Chief Court of Mysore.

4 PM SECRETARIAT I.I JUDICIAL 4 JUL 1917

To

D. M. NARASINGA RAO, Esq., B. A., B. L.,
Secretary to the Government of Mysore,
General Department.

Sir,

I am directed to report that the Chief Judge Sir Leslie Miller, Kt., entered upon his duties to-day forenoon after availing himself of the privilege leave sanctioned by the Government in Notification No. J. 4783/Cts.338-16-9 dated the 19th June 1917.

I have the honor to be,
S i r,
Your most obedient servant,

N. T. Gopaliengar

R E G I S T R A R.

M.S.C.

Confidential.

(43

R.O.S.C.No.562.

Chief Court of Mysore,
Bangalore,
23rd July 1917.

J 206.
1916-17
Cts 338-16
SL. 17

From

N. T. Gopaliengar Esq., B.A., LL.B.,
Registrar of the
Chief Court of Mysore.

GEN. & JUDICIAL SECRETARIAT 25 JUL 1917

To

D. M. Narasinga Rao Esq., B.A., B.L.,
Secretary to the Government of Mysore,
General Department,
B a n g a l o r e.

Sir,

Adverting to your letter No.J. 4784/Cts.338-16-10 dated the 19th June 1917, intimating sanction to the extension of the privilege leave applied for by Sir Leslie Miller, I am directed by the Judges of the Chief Court to invite the attention of His Highness the Maharaja's Government to an important question that is raised by the observation contained in the latter part of that letter.

2. That observation is to the effect "that if an officiating Chief Judge is appointed, a puisne Judge will also have to be appointed under the Chief Court Regulation, and that as the Judges do not consider the appointment of another Judge to be necessary, the functions of the Chief Judge under Sec.18 of the Regulation may be actively exercised by 'the Chief Court'".

3. The Judges, I am to say, do not desire, in this connection, to raise the question of the legality of the arrangement considered by the Government to be sufficient. They would prefer to make no pronouncement on this question, which might conceivably have far-reaching consequences so far as concerns the acts of the Court during the period covered by the arrangement, unless and until the point is formally raised and submitted for their decision by parties affected by such acts.

4. They wish to confine themselves, on the present occasion, to emphasising the undesirability, from an administrative point of view, of leaving the place of the Chief Judge vacant during the absence of the incumbent on privilege leave.

In the first place, it is easy to imagine that, apart from questions as to the defective constitution of the Court, practical difficulties and inconveniences might arise in the regulation and distribution of work in the Chief Court whenever its strength is reduced to two puisne Judges, and they happen to differ.

Secondly, the administrative work of the Chief Court, even if it can be "actively exercised" by the two puisne Judges without a Chief Judge, is likely to suffer in the absence of a recognised head of the Judicial Department, to whom the Government, the subordinate officers of the Department and the public can look as primarily responsible, in conjunction with his colleagues, for the work of the department. It would, I am to submit, be scarcely in keeping with the prestige or with the importance of the work of the highest Court of appeal and superintendence in the territories of Mysore to leave it without a Chief Judge for any but very short periods of casual leave.

Thirdly, no case has occurred in Mysore, as far as the Judges are aware, in which an officiating appointment has not been made whenever the Chief Judge has gone on privilege leave; and it may be added that the same procedure is enjoined by Statute as regards the High Courts in British India.

5. The Government have stated as their reason for declining to make an officiating appointment in the present instance the circumstance "that the Judges do not consider the appointment of another Judge necessary." As to this I am to say that the opinion of the Judges to which allusion is made was expressed solely from the point of view of the work of the Court. The two puisne Judges were willing to carry this on for a few weeks without putting the Government to the necessity and expense of appointing another

another puisne Judge, who could not in any case have materially helped them in the disposal of the work of the Court; but this had nothing to do with the constitution of the Court, much less with the necessity for the appointment of an officiating Chief Judge, as to which indeed the view of the Judges was quite plain and definite. (Vide the Registrar's confidential D.O. No.70 of the 11th June 1917).

6. I am to state further that, while the Judges leave it entirely to the Government to decide whether or not any action should be taken retrospectively in the present case, they desire to make it clear that they should not be taken as having given their implied concurrence to the present case being taken as a precedent.

7. In conclusion, I am to state that the entry "no substitute is necessary" against head 7 in the application form dated the 16th of May last is based on an observation in a letter from the Chief Judge directing an application to be drafted and submitted to the Government: that observation was made entirely with regard to the numerical strength of the Court and without any consideration of the question dealt with in this letter, or of precedents; and I am to express the regret of the Chief Judge if this inadvertence on his part has in any way conduced to the present apparent difference of opinion.

I have the honor to be,

S i r,

Your most obedient servant,

R. Gopalan

R E G I S T R A R.

TSK